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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,998	10/31/2003	Mark Scott	2534.0070001	8256
26111	7590	01/09/2008		
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER ALIA, CURTIS A	
			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			01/09/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/696,998

Applicant(s)

SCOTT, MARK

Examiner

Curtis Alia

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Response to Amendment***

2. This Office action is in reply to the communication sent on October 23, 2007. Claims 1-3 are pending, with claims 1-3 being independent.

#### ***Specification***

3. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

#### ***Claim Rejections - 35 USC § 101***

4. Claims 1-3 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The term "computer program product" is defined in paragraphs 67 and 68 of the specification. Applicant states in paragraph 67 that a "'computer program product' is used to generally refer to ... a carrier wave or other signal carrying software over a communication path 1426 (wireless link or cable) to communication interface 1424" and "a computer usable medium can include ... media that transmits a carrier wave." Applicant also states in paragraph 68 that "computer programs can also be received via communication

interface 1424." A carrier wave, wired or wireless transmission media are not statutory in subject matter.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-3 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1-3 were amended to recite a "tangible computer readable medium" which is not originally described or explained in the specification. There is a lack of written description of the term "tangible" in the specification. Therefore, the use and extent of the meaning of the word "tangible" is not fully described, thus leaving a reasonably broad interpretation to include types of tangible computer readable media that are non-statutory.

***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined

application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 2 and 3 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 6, 7 and 14 (respectively) of U.S. Patent No. 6,665,317 in view of Kramer et al. (US 6,658,027).

For claim 1, the patented claim 6 claims a method for handling the traffic from the packet-switched network to the public switched telephone network; and managing the jitter of said traffic, wherein the adaptive buffer is adjusted to regulate the flow of data packets, wherein a size of the adaptive buffer is determined based on jitter statistics comprising a jitter

measurement for a message currently being processed, an average jitter of a set of received data packets and the average jitter variation of the set of received data packets.

The patented claims do not recite a computer program product comprising a tangible computer readable medium to perform the methods. Kramer, from the same field of endeavor, teaches that a jitter buffer manager can be implemented in hardware, software, or a combination of the two to perform the methods described therein (see column 4, lines 54-63, jitter buffer manager is typically implemented as software instructions on a microprocessor). Thus, it would have been obvious to a person having ordinary skill in the art at the time of the invention to implement the invention of the patented claims in a software program executed on a computer processor. The motivation to combine these teachings is that the function of the jitter buffer manager can be improved upon through software updates rather than costly upgrades of hardware.

For claim 2, the patented claim 7 claims a method for managing the flow of a data packet within a set of data packets, comprising (a) receiving the data packet, wherein the received data packet is the most recent data packet received within the set of data packets, (b) measuring a jitter for the data packet received in step (a), (c) computing a jitter variation for the data packet received in step (a), (d) computing an average jitter measurement for the set of data packets, (e) computing an average jitter variation for the set of data packets, and (f) computing a target buffer size, wherein the target buffer size is a function of the average jitter measurement and the average jitter variation. However, Kramer teaches that a jitter buffer manager can be implemented in hardware, software, or a combination of the two to perform the methods described therein, as explained in the rejection for claim 1 above.

For claim 3, the patented claim 14 claims a method for calculating the size of a buffer used to manage the flow of a set of received data packets, comprising the steps of (a) establishing a minimum buffer size, (b) computing an average jitter measurement based on at least two received data packets, (c) computing an average jitter variation measurement based on at least two received data packets, and (d) determining a target buffer size based on the values determined in (a), (b) and (c). However, Kramer teaches that a jitter buffer manager can be implemented in hardware, software, or a combination of the two to perform the methods described therein, as explained in the rejection for claim 1 above.

#### ***Response to Arguments***

9. Applicant's arguments filed on October 23, 2007 have been fully considered but they are not persuasive. Adding the term "tangible" to the claims does not explicitly exclude non-statutory type computer readable media that can be broadly interpreted as tangible computer readable media.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Alia whose telephone number is (571) 270-3116. The examiner can normally be reached on Monday through Friday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CAA



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